IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2375 OF 1993

Vegetable Vitamin Foods
Employees's Union ...Petitioner
vs.
Sarva Sharamik Sangh & others ...Respondents

Mr.S.M.Dharap for the petitioner
Mr.N.M.Ganguli with Ms Tiwari for respondent no.1
Mr.P.C.Pawaskar for respondent No.2

CORAM: SMT.RANJANA DESAI & A.S.OKA,JJ.
DATE OF HEARING OF LAST ARGUMENTS: DECEMBER 7,2005
DATE OF PRONOUNCEMENT OF JUDGMENT: DECEMBER 23,2005

JUDGMENT: (PER A.S.OKA,J.)

1. By this petition under Article 226 of Constitution of India the petitioner has taken exception to the order dated 3rd November 1993 passed by the learned Member of the Industrial Court, Bombay. By the said order, the learned Member of the Industrial Court allowed the application made by the Respondent No.1 for the registration as a recognised union under Section 11 of the Maharashtra Registration of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the said Act of 1971).

2. With a view to appreciate the submissions made by the learned Counsel for the parties, it will be necessary to refer the facts of the case in brief. The Respondent No.1 filed an application under Section 11 of the said Act of 1971 claiming registration as recognised union of the undertaking referred

to in paragraph No.5 of the application. It is alleged that undertaking was of the Respondent No.2-Company. While deciding the application by passing the impugned order, the learned Member of the Tribunal referred to the notification issued by the State Government in exercise of the powers conferred by the proviso to clause 15 of Section 3 of the said Act of 1971. By the said notification, the State Government notified that the group of three concerns owned by the Respondent No.2-Company more particularly specified in the schedule to the notification shall be one undertaking for the purposes of Chapter III of the said Act of 1971. The learned Member observed on perusal of the report of the Investigating Officer that the Respondent no.1-Union collected subscription from July 1987 to December 1987 and also for further period from January 1988 to March 1988. The learned Member referred to the report submitted by the Investigating Officer to the Industrial Court and came to the conclusion that the Respondent No.1-Union was having membership of more than 30% in all the three concerns of the Respondent No.2-Company. The learned Member held that the Respondent No.1 has satisfied the conditions specified under Section 11 and 19 of the said Act of 1971 and therefore by the impugned order, the learned Member directed that the Respondent No.1-Union be granted necessary certificate of recognition for the Respondent No.2-Company as prayed.

3. The present petition is filed by the Union which was before the learned Member of the Industrial Court as the non Applicant No.2. Shri Dharap, learned Counsel appearing for the petitioner submitted that the application for registration was filed by the Respondent No.1 in the year 1988 and the Notification under the proviso to clause 15 of Section 3 of the
said Act of 1971 was issued on 30th July 1992 and the Industrial Court committed an error by applying the said notification retrospectively. He submitted that the application was not relating the said undertaking referred to in the notification and therefore enquiry in the application made in the year 1988 ought to have been confined to the position as it exited in the year 1988 when the application for registration was filed. He submitted that the application made by the Respondent No.1 in the year 1988 could not have been considered at all for one undertaking which was constituted by the said subsequent notification issued in the year 1992.

4. The learned counsel for the Respondent No.1 submitted that the application made by the Respondent No.1 was as regards all the three undertakings which are subject matter of the notification dated 30th July 1992. The learned Counsel submitted that the Petitioner had remedy to apply for cancellation of registration granted to the Respondent No.1.

It was further submitted that the application made by the Petitioner under Section 14 of the said Act of 1971 for registration as recognized union in place of the Respondent No.1-Union was pending before the learned Member of the Industrial Court and therefore, it was not necessary for this Court to entertain this Petition. The learned Counsel invited our attention to the averments made in the Petition as well as to the contents of the enquiry report.

5. We have considered the rival submissions. On plain reading of the provisions of Section 11 of the said Act of 1971 and the Rules framed under the said Act, it is apparent that the Application under Section 11 must relate to a specified undertaking. In fact, the form prescribed by the Rules requires that in column No.5 the Applicant must specify the address of the undertaking. In the Application made by the Respondent No.1, the undertaking referred to in paragraph No.5 is M/s.Vegetable Vitamin Foods Company (Pvt.) Ltd. having its factory at Plot No.109, Post Box no.6711, Sion (East), Bombay 400 022. It is averred in the application that out of 300 employees of the undertaking, the membership of the Respondent No.1 is 67%. A reply was filed by the Respondent No.2 to the said Application. One of the objections raised in the reply was that a composite Application was made for registration as recognized union without impleading three units of the Respondent No.2-Company separately. Specific

objection raised is that separate Applications for registration of recognised union were necessary in case of three different units of the Respondent No.2-Company.

6. The notification dated 30th July 1992 issued under the proviso to sub section 15 of Section 3 of the said Act of 1971 shows that there are three concerns owned by M/s.Vegetable Foods Company (Pvt.) Ltd. The said three concerns are located at Plot No.109 at Sion,Bombay, Plot No.109-B at Sion, Bombay and at Hay bunder Sewree respectively. In paragraph No.5 of the application filed by the Respondent No.1, a reference is only to one concern which is located at Plot No.109 at Sion, Mumbai. There is a report of the Investigating Officer appointed by the Industrial Court on record of the Petition. In the report it is observed that the Respondent No.1 has a valid membership of 184 employees. The report is not clear as to whether the membership is considered with reference to the three concerns mentioned in the notification or with reference to only one concern referred to in the paragraph No.5 of the application. The report of the Investigating Officer has been considered in paragraph No.14 of the impugned order. Perusal of the paragraph No.14 and other parts of the impugned order shows that the impugned order is not clear whether the case of the Respondent No.1 is considered by the Industrial Court with reference to the concern referred to in paragraph No.5 of the Application of the Respondent No.1 or with reference to

undertaking of the three concerns in respect of which notification has been issued on 30th July 1992. There is no indication in the impugned order whether the recognition is being granted in relation to the undertaking which is subject matter of notification dated 30th July 1992 or in relation to the concern of the company on Plot No.109 at Sion, Mumbai. In the operative part of the impugned order, it is merely stated that the application for recognition of the Applicant-Union is allowed. As the Application has been allowed as prayed, it is obvious that recognition is not granted relating to the undertaking which is subject matter of the notification dated 30th July 1992. Even the operative part of the impugned order is vague. If the learned Member of the Industrial Court was desirous of considering application in respect to the undertaking which is subject matter of notification dated 30th July 1992, notice to that effect ought to have been given to the non-applicants in the application so that there could have been proper adjudication. There is no indication as to whether the membership of the Respondent No.1 is considered with reference to the undertaking which is subject matter of the notification dated 30th July 1992 or with reference to the concern of the company on Plot No.109 at Sion, Mumbai which is mentioned in paragraph No.5 of the Application. Thus, the impugned order is not only vague but it also shows non-application of mind. The impugned order, therefore, deserves to be quashed and set aside only on that ground and

the application filed by the Respondent No.1 will have to be reconsidered in accordance with law. The learned Counsel appearing for the Petitioner has drawn our attention to the decision of the Apex Court reported in 1996 (2) L.L.N. 35 (Association of Chemical Workers Vs. G. D. Rane and others). In paragraph No. 4 of the said decision the Apex Court held thus :

"4. Under Section 14 of the Act, the prohibition to make a fresh application was imposed for a period of two years; further making of an application within one year from the date of order passed by Industrial Court was prohibited. In other words, after the expiry of two years, if any rival union seeks any recognition, the Industrial Court is required to follow the procedure prescribed under Section 14 of the Act and then to take a decision according to law. Since the order was passed by the Industrial Court in the year 1983 and sufficient time has already elapsed, the embargo under Section 14 of the Act no longer is available. Therefore, if the appellant still seeks any recognition of the appellant-union in accordance with the provisions of the Act, it would be open to adopt such procedure as is available under law."

He submitted that after such a long lapse of time and in view of what has been held by the Apex Court, order of remand cannot be passed at this stage. We cannot accept the said submission for the simple reason that the order impugned is very vague and it shows non-application of mind. The learned Member of the Tribunal has not even indicated in respect of which undertaking recognition has been granted to the Respondent No.1. Therefore, we have no option but to adopt the course of remanding the matter to the Industrial Court.

7. Hence, we pass the following order :

i) The impugned Judgment and Order dated 3rd November 1993 is quashed and set aside and the Application (MRTU) No.8 of 1988 is remanded back to the learned Member of the Industrial Court, Bombay.

ii) The Application (MRTU) No.8 of 1988 shall be decided afresh by the learned Member of the Industrial Court after permitting all the parties to produce additional material on record. The Application shall be decided as expeditiously as possible and preferably within a period of six months from the date of production of authenticated copy of this order before the learned Member.

(SMT.RANJANA DESAI,J.)

(ABHAY S.OKA,J.)